

## Merit Systems Protection Board

## § 1210.4

(c) The administrative judge's authority under this part to issue a decision terminates following the passage of 21 days after the appeal is initially filed. (38 U.S.C. 713(e)(3)).

(d) An administrative judge's decision in an appeal filed under this part is not subject to any further appeal. (38 U.S.C. 713(e)(2)).

(e) This part applies only to the Secretary's authority to remove or transfer an employee covered under 38 U.S.C. 713 and the Board's authority to review such decisions. This authority is in addition to the authority already provided the agency in 5 U.S.C. 3592 and the authority provided the Board under 5 U.S.C. 7541, *et seq.* to take an adverse action against an employee. (38 U.S.C. 713(f)).

### § 1210.2 Definitions.

(a) The term *employee covered by this part* means an individual career appointee as that term is defined in 5 U.S.C. 3132(a)(4) or an individual who occupies an administrative or executive position and is appointed under 38 U.S.C. 7306(a) or 7401(1). (38 U.S.C. 713(a) and (g)).

(b) The term *administrative judge* means a person experienced in hearing appeals and assigned by the Board to hold a hearing and decide an appeal arising under this part. (38 U.S.C. 713(e)(1)).

(c) The term *response file* means all documents and evidence the Secretary of the Department of Veterans Affairs, or designee, used in making the decision to remove or transfer an employee covered by this part. It also may include any additional documents or evidence that the agency would present in support of the Secretary's determination in the event that an appeal is filed.

(d) The term *misconduct* includes neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function. (38 U.S.C. 713(g)(2)).

(e) The term *transfer* means the transfer of an employee covered by this part to a General Schedule position. (38 U.S.C. 713(a)(1)(B)).

### § 1210.3 Application of practices and procedures to appeals filed under this part.

(a) The following provisions of part 1201 of this chapter are inapplicable to appeals filed under this part:

(1) Section 1201.22 (inapplicable to appeals brought under this part pursuant to Public Law 113-146, section 707(b)(2));

(2) Section 1201.27 (class appeals are not allowed as such appeals cannot be adjudicated within 21 days);

(3) Section 1201.28 (case suspensions are not allowed because they are inconsistent with the requirement to adjudicate appeals under this part within 21 days);

(4) Section 1201.29 (dismissals without prejudice are not allowed because those procedures are inconsistent with the requirement to adjudicate appeals under this part within 21 days);

(5) Section 1201.56 (this regulation is not controlling; parties should refer to § 1210.18);

(6) Sections 1201.91 through 1201.93 (interlocutory appeals are not allowed because the Board lacks authority to review appeals filed under this part);

(7) Sections 1201.114 through 1201.20 (petitions for review are not allowed because the decisions in appeals filed under this part are not subject to further appeal) (38 U.S.C. 713(e)(2));

(8) Sections 1201.121 through 1201.145 (procedures for other original jurisdiction cases are not relevant to appeals filed under this part);

(9) Sections 1201.152, 1201.153(b), 1201.154, 1201.155, 1201.156, 1201.157, and 1201.161 (these provisions are inapplicable to appeals filed under 38 U.S.C. 713).

(b) Except as modified by this part, the remaining relevant provisions of part 1201 of this chapter are applicable to appeals filed under this part.

### § 1210.4 Waiver of MSPB regulations.

The Board may waive any MSPB regulation in order to provide for the expedited review of an appeal covered by this part. Public Law 113-146, section 707(b)(3).